

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

ROMIE D. BISHOP and SHIRLEY)	
BISHOP t/a SINEX POOLS, INC.,)	
)	
Defendants Below)	
Appellants,)	
)	C.A. No. 05A-05-002 MMJ
v.)	
)	
BRIAN P. MURPHY and LORETTA)	
J. MURPHY,)	
)	
Plaintiffs Below)	
Appellees.)	

ORDER

Upon Appeal From Court of Common Pleas

Submitted: January 13, 2006
Decided: April 10, 2006

1. On October 13, 2004, Brian P. Murphy and Loretta J. Murphy filed an action in the Court of Common Pleas against Romie D. Bishop and Shirley A. Bishop, t/a Sinex Pools, Inc. Plaintiffs alleged that Defendants had breached a contract to construct a swimming pool for Defendants. Defendants' counterclaim asserted breach of contract, tortious interference with contractual relations, and slander.

2. Trial was held in the Court of Common Pleas on April 26, 2005. All parties appeared *pro se*.¹ Sinex Pools, Inc. was not a party in the action and, therefore, did not appear through counsel, as is required for corporate parties. The Court of Common Pleas issued its Decision After Trial on April 28, 2005. The Court of Common Pleas held:

The Defendants' Breach of Contract

As to the question of which party breached the contract, I conclude that the defendants breached the contract when they failed to complete the swimming pool in a timely manner and failed to supply materials that were paid for by the plaintiffs. I also conclude that the Murphys were justified in terminating the contract with the Bishops because of the Bishops' breach of contract.

The Defendants are Jointly and Severally Liable

The defendants initially contended that they could not be sued individually because Sinex Pools, Inc. was a corporation of the State of Delaware. They failed to produce any evidence that Sinex Pools, Inc. is incorporated in this state. Mrs. Bishop conceded on the witness stand that the defendants were not incorporated in the State of Delaware.

* * *

I conclude that Romie D. Bishop and Shirley Bishop are jointly and severally liable for the breach of contract.

¹Plaintiff Brian P. Murphy, however, is a member of the Delaware Bar.

The Plaintiffs' Award of Damages

* * *

I award damages in the amount of \$6,054.47.

Defendants' Counterclaim for Breach of Contract

As to the defendants' counterclaim for the replacement of the pool liner, the defendants contend the pool liner was cut by a disgruntled employee who was working for the plaintiffs. The contention is speculative and there is no evidence to support this conclusion. Accordingly, this counterclaim is rejected.

Defendants' Claim for Tortious Interference with Contractual Relations

* * *

In this case, the defendants contend that the plaintiffs called other clients and told them the defendants were planning to file bankruptcy. They also contend that the plaintiffs were encouraging other clients to file civil actions against the defendants. There is absolutely no evidence to support this claim and it is rejected.

Defendants' Counterclaim for Slander

* * *

There is no evidence to support a defamatory communication by the plaintiffs. Mr. Murphy called Mr. Caudel concerning his pool problems with the defendants. He made no derogatory statements concerning the defendants. He was simply sympathizing with Mr. Caudel concerning his pool problems. Accordingly, the claim for slander is rejected.

Based on these findings of fact and conclusions of law, judgment is entered on behalf of the plaintiffs and against the defendants in the

amount of \$6,054.47, plus costs for these proceedings. Judgment is also entered on behalf of the plaintiffs on the defendants' counterclaims.

3. On May 6, 2006, Romie D. and Shirley Bishop filed an appeal of the Court of Common Pleas' Decision in this Court. In considering appeals from the Court of Common Pleas to the Superior Court, factual issues are reviewed on the record and are not tried *de novo*.² This Court's role is to correct errors of law and to review the factual findings of the court below to determine if such findings are sufficiently supported by the record and are the product of an orderly and logical deductive process.³ Questions of law are reviewed *de novo*.⁴ Following briefing, this Court heard oral argument on January 13, 2006.

4. In a separate action, *Ken Caudill v. Sinex Pools, Inc., Romie Bishop and Shirley Bishop v. Edna Caudill*,⁵ a Superior Court Judge considered whether Sinex Pools, Inc. was a *de facto* corporation. The *Caudill* Court held:

When the Court considers all of the documentation and testimony established in discovery, it finds that the only thing preventing corporate status in this case is the authorization from the Secretary of State. Sinex Pools has operated as a corporation since Mrs. Bishop

²11 Del. C. § 5301.

³*Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972).

⁴*Ensminger v. Merrit Marine Const., Inc.*, 597 A.2d 854, 855 (Del. Super. 1988).

⁵Del. Super., C.A.No. 04C-10-090, Carpenter, J. (Jan 18, 2006)(ORDER).

bought the company in January 2004, which is even evidenced by the contract at issue in this case. Contracts were executed in the name of the corporation, and there is nothing to suggest either bad faith or a deviant motive by Mrs. Bishop in the representations that were made about the business's corporate status. While the Court can only speculate why the incorporation process was not completed, the Court finds that Sinex Pools has met the criteria for a *de facto* corporation status.

Based upon the finding that Sinex Pools, Inc. is a *de facto* corporation, the Court granted summary judgment in favor of Romie and Shirley Bishop, individually, and dismissed the individual defendants from the litigation.

5. In the instant case on appeal, Romie and Shirley Bishop have argued that the Court of Common Pleas erred in finding joint and several liability against them because the party to the contract was Sinex Pools, Inc., a *de facto* corporation.

6. In reliance on this Court's decision in *Caudill v. Bishop*, which the Court finds to be *res judicata* on the issue of corporate status, the April 28, 2005 Decision of the Court of Common Pleas is hereby reversed as follows:

(A) Defendants Romie D. Bishop and Shirley A. Bishop, not being parties to the February 16, 2004 contract executed by Loretta Murphy and by Shirley Bishop on behalf of *de facto* corporation Sinex Pools, Inc., cannot be jointly and

severally liable for breach of contract. Therefore, the Court of Common Pleas award of damages to Brian and Loretta Murphy must be reversed.

(B) Defendants Romie D. Bishop and Shirley A. Bishop are entitled to summary judgment on the issue of their liability and should be dismissed as parties to the Court of Common Pleas action.

(C) Not being parties to the contract, Romie D. Bishop and Shirley A. Bishop have no standing to assert claims for breach of contract or tortious interference with contractual relations. Therefore, summary judgment on the counterclaims should be granted in favor of Brian and Loretta Murphy.

7. Having reviewed the record presented in the Court of Common Pleas, this Court finds that the April 28, 2005 Decision is sufficiently supported by the record and is the product of an orderly and logical deductive process on the issue of the counterclaim for slander. The Court of Common Pleas did not err as a matter of law in granting summary judgment in favor of Brian and Loretta Murphy on the counterclaim for slander.

THEREFORE, this case is hereby **REVERSED IN PART AND REMANDED** to the Court of Common Pleas for further action consistent with this opinion.

IT IS SO ORDERED.

The Honorable Mary M. Johnston